

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT
OF TENNESSEE, EASTERN DIVISION AT JACKSON

AUGUSTINA C. AMALU,
*individually and as next kin of and
Administrator of the Estate of
IFEYINWA STEPHANIE AMALU, deceased,
et. al.*

Plaintiffs,

v.

NO. 1:15-cv-01116 STA-egb
JURY DEMAND

STEVENS TRANSPORT, INC.,
et. al.

Defendants.

_____ /

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

The Plaintiffs, AUGUSTINA C. AMALU, *individually and as next kin of and Administrator of the Estate of IFEYINWA STEPHANIE AMALU, deceased*, and ODY UDEOZO and JOSEPHINE UDEOZO, *individually and as next kin of and Administrators of the Estate of CHINELO UDEOZO, deceased* (“**Plaintiffs**”) move for entry of an order granting Partial Summary Judgment against Defendant Stevens Transport, Inc. (“**Stevens Transport**”), pursuant to Fed. R. Civ. P. 56 on the issue of whether they are a “motor carrier” or “broker” with respect to the underlying facts of this litigation.

ISSUE PRESENTED

The Federal Motor Carrier Safety Regulations (“**FMCSR**”) define certain entities including “motor carriers” and “brokers” and establish limitations on their activities. Although Stevens Transport entered a contract for the transport of cargo

that defined it as a “motor carrier” and held itself out as such, Stevens Transport now denies “motor carrier” status as applied in this litigation. Can Stevens Transport disclaim “motor carrier” status in favor of “broker” status”?

This motion seeks entry of an order for partial summary judgment against Stevens Transport on its asserted defense raised that it cannot be held liable because it was not acting as a motor carrier for the cargo at issue (Answer of Stevens Transport to Consolidated and Amended Complaint, at ¶¶ 18, 19, 70, 93) and that Stevens Transport TL, Inc. “brokered the cargo to LSH Transport” (Answer of Stevens Transport TL, Inc. to Consolidated and Amended Complaint).¹ Plaintiffs seek the court to find, as a matter of law, that Stevens Transport is a “motor carrier” with regard to the transport of the cargo at issue and not a “broker”, as defined by applicable law. Plaintiffs submit there is no genuine dispute as to any material fact and the Plaintiffs are entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (a) - (c)(1)(A-B).

In support of this Motion for Partial Summary Judgment, Plaintiffs submit the following materials in support:

1. A Memorandum of Law in Support of Plaintiffs’ Motion for Summary Judgment;
2. A Local Rule 56.1 Statement of Undisputed Material Facts with citations to the record.

¹ Also see Answer of Stevens Transport to Amended Complaint at ¶ 7.

3. The Deposition of Timothy Jordan, to be filed with the Court by separate Notice of Filing;
4. The Deposition of William Tallent, to be filed with the Court by separate Notice of Filing;
5. The Deposition of Matthew Gray, to be filed with the Court by separate Notice of Filing;
6. The Deposition of Steve Hurt, to be filed with the Court by separate Notice of Filing;
7. A Declaration of Peter A. Philbrick, attached as Exhibit 1.

Wherefore, Plaintiffs respectfully request this Court grant their Motion for Partial Summary Judgment and find, as a matter of law, that Stevens Transport is a motor carrier with respect to the facts giving rise to this litigation, and not a broker.

Respectfully submitted,

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s/Matthew E. Wright

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CERTIFICATE OF SERVICE

I, Matthew E. Wright, hereby certify that a true and correct copy of the foregoing was served, via the court's ECF which sends notice to the following:

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